

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown  
classification; PHOENIX DIGITAL GROUP  
LLC, an Arizona limited liability company;  
JEFFREY CONWAY, an individual; DAVID  
SCHAEFER, an individual; JORDAN GREEN,  
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**DEFENDANTS' MOTION TO  
EXTEND DISCOVERY  
CUTOFF AND DISCOVERY  
MOTION DATES**

**Note on Motion Calendar:  
March 3, 2023**

For reasons stated herein, Defendants, by and through their undersigned counsel, respectfully request that the date for concluding discovery in this matter, currently set for April 21, 2023, and the date for filing discovery motions, currently set for March 13, 2023, be extended to June 23, 2023 and May 25, 2023, respectively.

Defendants further request that all further discovery in this case be limited to matters reasonably related to Defendants' Amended Counterclaims.

These requests are made in light of the following:

1. This Court's February 14, 2023 Minute Order (Dkt#86) resetting the trial and other dates requires that any discovery motions be filed by March 13, 2023, and that discovery be completed by April 21, 2023.

1           2.       Plaintiff Bungie's Motion to Dismiss Defendants' Amended Counterclaims  
2 (Dkt#74) was not decided until February 3, 2023 (Dkt#84), and it was only upon this date that  
3 both Bungie and Defendants first learned that some of Defendants' counterclaims would  
4 proceed.

5           3.       To date, Bungie has resisted Defendants' efforts to obtain discovery related to  
6 issues other than the copyright infringement and trademark infringement claims alleged in  
7 Bungie's Amended Complaint (Dkt#34). In addition, Bungie's Motion to Dismiss  
8 Defendants' Amended Counterclaims (Dkt#74) itself makes several factual allegations that  
9 this Court itself noted would likely be addressed during a motion for summary judgment.  
10 Defendant's have not had an opportunity to conduct discovery into these factual allegations  
recently made by Bungie.

11           4.       The current discovery schedule makes it impossible for Defendants to conduct  
12 the discovery needed properly to develop and present their counterclaims. For example, even  
13 if Defendants were to have served all discovery requests the very day this Court issued its  
14 February 14, 2023 Minute Order (Dkt#86), the deadline for filing discovery motions (i.e.,  
15 March 13, 2023) would have passed before Bungie would even need to respond to them. By  
16 simply ignoring the requests, Bungie could thus avoid all discovery and Defendants would  
have no opportunity to seek help from this Court.

17           5.       Defendants propose and request that further discovery in this case be limited  
18 solely to matters reasonably related to the counterclaims (Indeed, Bungie has already  
19 completed "scorched earth" discovery of Defendants on the other matters), and that the  
20 deadline for completing such discovery be extended to June 23, 2023. In addition,  
21 Defendants propose and request that the deadline for filing discovery motions be extended to  
22 May 25, 2023. Such extension will permit both parties to complete discovery into the  
23 counterclaims in a reasonable and orderly manner and will permit sufficient time to enlist the  
assistance of this Court should such be necessary.

24           6.       The remaining dates, with the possible exception of summary judgment  
25 motions can largely be kept in place, as trial is not scheduled until December 4, 2023. Nor  
26 should the deadlines for completing settlement discussions and mediation be affected as, by  
27  
28

1 now, all parties largely know their respective positions and further delay is unlikely to change  
2 their settlement thoughts.

3 For all the foregoing reasons, Defendants respectfully request that deadlines for filing  
4 discovery motions and completing discovery into the counterclaims be extended to May 25,  
5 2023 and June 23, 2023 respectively.

6 Such action by this Court is respectfully requested.

7 **CERTIFICATION UNDER RULE 26(C)(1)**

8 On February 14, 2023, Plaintiff's counsel, Mr. Christian W. Marcello and I exchanged  
9 a series of emails regarding the issues raised in this motion, and in particular Defendants'  
10 intent to seek an extension of the discovery motion and cutoff dates to and including May 25,  
11 2023 and June 23, 2023 respectively, but despite good faith efforts could not reach agreement.  
12 Undersigned counsel offered to speak by telephone regarding these issues but Mr. Marcello  
13 indicated such would not be necessary, and that Bungie would not accuse Defendants of  
14 having failed to comply with Rule 26(C)(1).

15 Dated February 16, 2023.

16 /s/ Philip P. Mann

17 Philip P. Mann, WSBA No: 28860  
18 **Mann Law Group PLLC**  
19 403 Madison Ave. N. Ste. 240  
20 Bainbridge Island, Washington 98110  
21 Phone (206) 436-0900  
22 phil@mannlawgroup.com  
23 Attorneys for Defendants  
24  
25  
26  
27  
28